

### **REMARKS**

This is in response to the Final Office Action mailed on August 30, 2007.

Claims 14-25 are currently pending in this application, with claims 14 and 19 being independent. *No new matter has been added.*

Reexamination in light of the following remarks is respectfully requested.

#### **Entry of amendment**

This amendment *prima facie* places the case in condition for allowance. Alternatively, it places this case in better condition for appeal. Accordingly, entry of this amendment is respectfully requested.

#### **New non-final Office Action**

At least for the following reasons, if the allowance of the claims is not forthcoming at the very least and a new ground of rejection made, then a **new non-final Office Action** is respectfully requested.

#### **Prematureness**

Applicant, seeking review of the *prematureness* of the final rejection within the Final Office Action, respectfully requests reconsideration of the finality of the Final Office Action for the reasons set forth hereinbelow. See M.P.E.P. §706.07(c).

**Claim objections**

Paragraph 1 of the Final Office Action indicates an objection to claim 14.

This objection is traversed at least for the following reasons.

While not conceding the propriety of this objection and in order to advance the prosecution of the above-identified application, claim 14 has been amended.

Withdrawal of this objection is respectfully requested.

**Rejection under 35 U.S.C. §112, second paragraph**

Paragraph 3 of the Final Office Action indicates a rejection of claims 1-13 under 35 U.S.C. §112, second paragraph.

This rejection is traversed at least for the following reasons.

While not conceding the propriety of this objection and in order to advance the prosecution of the above-identified application, claims 1-13 have been canceled.

Withdrawal of this objection is respectfully requested.

**Rejections under 35 U.S.C. §102 and 35 U.S.C. §103**

Paragraph 6 of the Final Office Action indicates a rejection of claims 1-7, 9, 10, and 13-16 under 35 U.S.C. §102 as allegedly being anticipated by U.S. Patent No. 6,211,509 to Inoue et al. (Inoue).

Paragraph 8 of the Final Office Action indicates a rejection of claims 8, 11, 12, 17, and 18 under 35 U.S.C. §103 as allegedly being unpatentable over Inoue in view of U.S. Patent Application No. 2005/0035376 to Yamada.

These rejections are traversed at least for the following reasons.

**Claims 1-13** - While not conceding the propriety of this objection and in order to advance the prosecution of the above-identified application, claims 1-13 have been canceled.

**Claims 14-18** - At least for the following reasons, if the allowance of the claim is not forthcoming at the very least and a new ground of rejection made, then a **new non-final Office Action** is respectfully requested.

Claims 15-18 are dependent upon claim 14. Claim 14 is drawn to a method of manufacturing a solid-state image pickup device, characterized by comprising:

a step of forming a photoelectric converting portion and collective lens in each pixel of an imaging area,

wherein the collective lens is placed at a position shifted more toward a center of the imaging area as a distance from the center of the imaging area to a pixel thereof increases; and

an amount of the shift of the collective lens is defined based on the height from a surface of the photoelectric converting portion of the collective lens and the thickness in the

direction of depth of the substrate of the photoelectric converting portion such that an amount of light incident within the photoelectric converting portion can increase.

The following description is provided for illustrative purposes and is not intended to limit the scope of the invention.

Provided hereinbelow are Figures 1-3 of the specification as originally filed.

FIG. 1

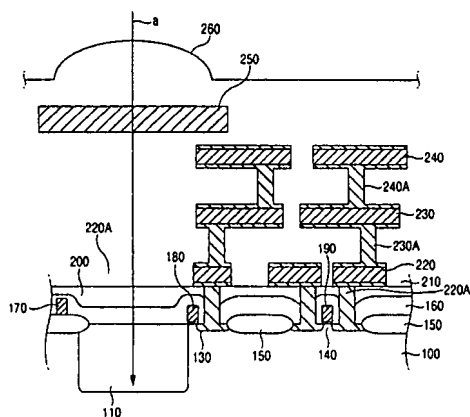


FIG. 2

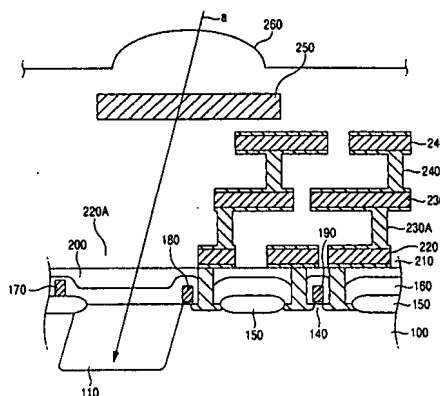
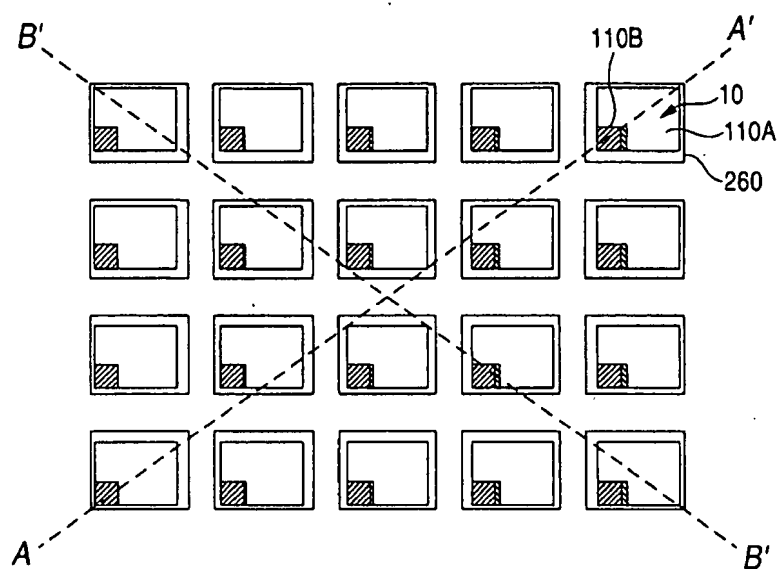


FIG. 3



Inoue - Inoue arguably teaches the presence of a solid-state image sensor. Provided hereinbelow is Figure 1 of Inoue.

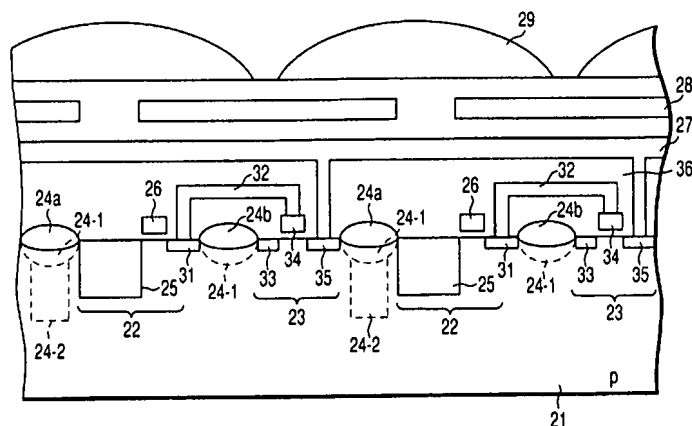


FIG. 1A

The Final Office Action appears to associate element 29 of Inoue as the *collective lens* 29 and appears to associate element 22 of Inoue as the *photoelectric converting portion* 22 (Office Action at page 5).

However, comparing the adjacent pixel units depicted within Figure 1A of Inoue, Figure 1A of Inoue *fails* to disclose, teach, or suggest that the collective lens 29 is placed at a position shifted more toward the center of the imaging area from a part on the symmetrical substantial center as a distance from the center of the imaging area to a pixel thereof increases.

Nevertheless, the Final Office Action refers to Figures 1A and 2A of Inoue to account for this feature (Office Action at page 5).

In response to this reliance only upon Figures 1A and 2A of Inoue, it is well established under U.S. patent practice and procedures that drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes *if the specification is completely silent* on the issue. *Hockerson-Halberstadt Inc. v. Avia Group International Inc.*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). See M.P.E.P. §2125 (proportions of features in a drawing are not evidence of actual proportions when drawings are not drawn to scale).

Moreover, arguments based on the measurement of a drawing are of little value absent any written description in the specification of the quantitative values allegedly shown within the drawings. *In re Wright*, 569 F.2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977).

In this regard, the Final Office Action fails to identify any written description in the specification of Inoue for the teaching that the alleged collective lens 29 of Inoue is placed at a position shifted more toward the center of the imaging area from a part on the symmetrical substantial center as a distance from the center of the imaging area to a pixel thereof increases.

- *Thus, Inoue fails to disclose, teach, or suggest that the collective lens is placed at a position shifted more toward the center of the imaging area from a part on the symmetrical substantial center as a distance from the center of the imaging area to a pixel thereof increases.*

In this regard, the Final Office Action fails to identify any written description in the specification of Inoue for the teaching that the alleged collective lens 29 of Inoue has an amount of shift depending on the degree of asymmetry of the surface of the alleged photoelectric converting portion 22 of Inoue in a pixel positioned at an equal distance from the center of the imaging area.

- *Thus, Inoue fails to disclose, teach, or suggest that the collective lens is placed at a position shifted more toward the center of the imaging area as a distance from the center of the imaging area to a pixel thereof increases.*

The Final Office Action fails to identify any written description in the specification of Inoue for the teaching that an amount of the shift of the alleged collective lens 29 of Inoue is defined based on the height from a surface of the alleged photoelectric converting portion 22 of the alleged collective lens 29 and the thickness in the direction of depth of the substrate of the alleged photoelectric converting portion 22 such that an amount of light incident within the alleged photoelectric converting portion 22 can increase.

- Thus, Inoue fails to disclose, teach, or suggest that an amount of the shift of the collective lens is defined based on the height from a surface of the photoelectric converting portion of the collective lens and the thickness in the direction of depth of the substrate of the photoelectric converting portion such that an amount of light incident within the photoelectric converting portion can increase.

The Final Office Action contends that applicant's arguments that drawings are not to scale has no merit because Applicant's own drawings are not to scale to in the absence of quantitative dimensional measurements (Final Office Action at page 12).

In this regard, the Final Office Action impermissibly benefits from of the Applicant's own specification in its reasoning regarding the rejection of the claims.

However, "it is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. The references themselves must provide some teaching whereby the applicant's combination would have been obvious" (citations omitted). *In re Gorman*, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). See also *In re Dembiczak*, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999) (rejection based upon hindsight is reversed).

Here, the above-noted contention is hindsight reconstruction, using the Applicant's disclosure as a template to fill in the gaps.

Page 13 of the Final Office Action alleges a depiction of Figure 1A of Inoue.

In response, a review of the Inoue reference itself fails to show arrows extending from lens 29 into photodiode 25, as the Final Office Action depicts.

Thus, the allegations found on page 13 of the Final Office Action regarding Figure 1A of Inoue are unsupported by the teachings found within the Inoue reference.

Yamada - Yamada arguably teaches the presence of a solid-state image sensor. Yamada arguably teaches the presence of a plurality of photoelectric conversion sections 309 (Yamada at paragraph [0061]).

Provided hereinbelow is Figure 1 of Yamada.

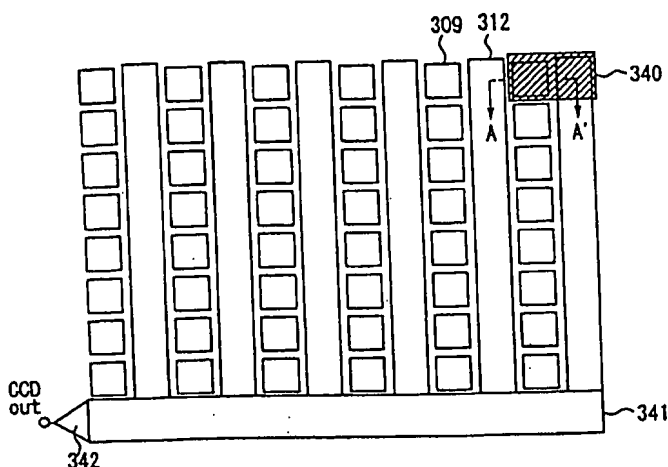


FIG. 1

The Final Office Action fails to identify any written description in the specification of Yamada for the teaching that an alleged collective lens of Yamada is placed at a position shifted more toward the center of the imaging area from a part on the symmetrical substantial center as a distance from the center of the imaging area to a pixel thereof increases.

Yamada - The Final Office Action fails to identify any written description in the specification of Inoue for the teaching that a collective lens of Yamada is placed at a position shifted more toward the center of the imaging area as a distance from the center of the imaging area to a pixel thereof increases.

- Thus, Yamada fails to disclose, teach, or suggest that the collective lens is placed at a position shifted more toward the center of the imaging area as a distance from the center of the imaging area to a pixel thereof increases.



The Final Office Action *fails* to identify any written description in the specification of Yamada for the teaching that an amount of the shift of a collective lens of Yamada is defined based on the height from a surface of the alleged photoelectric converting portion 309 of the collective lens and the thickness in the direction of depth of the substrate of the alleged photoelectric converting portion 22 such that an amount of light incident within the alleged photoelectric converting portion 309 can increase.

- *Thus, Yamada fails to disclose, teach, or suggest that an amount of the shift of the collective lens is defined based on the height from a surface of the photoelectric converting portion of the collective lens and the thickness in the direction of depth of the substrate of the photoelectric converting portion such that an amount of light incident within the photoelectric converting portion can increase.*

### **Claims 19-25**

**No rejection of claims 19-25** is found within the Final Office Action.

Accordingly, claims 19-25 are deemed to contain allowable subject matter.

Allowance of the claims is respectfully requested.

### **Conclusion**

For the foregoing reasons, all the claims now pending in the present application are allowable, and the present application is in condition for allowance.

Therefore, this response is believed to be a complete response to the Office Action.

Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers.

There is no concession as to the veracity of Official Notice, if taken in any Office Action. An affidavit or document should be provided in support of any Official Notice taken. 37 CFR 1.104(d)(2), MPEP § 2144.03. See also, *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989)(failure to provide any objective evidence to support the challenged use of Official Notice constitutes clear and reversible error).

Accordingly, favorable reexamination and reconsideration of the application in light of the remarks is courteously solicited.

### **Extensions of time**

Please treat any concurrent or future reply, requiring a petition for an extension of time under 37 C.F.R. §1.136, as incorporating a petition for extension of time for the appropriate length of time.

### **Fees**

The Commissioner is hereby authorized to charge all required fees, fees under 37 C.F.R. §1.17, or all required extension of time fees. If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: October 10, 2007

Respectfully submitted,

By 

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